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In re Application of  
Jansson et al  
Application No.: 10/575,461  
PCT No.: PCT/SE2004/001467  
Int. Filing Date: 13 October 2004  
Priority Date: 13 October 2003  
Attorney's Docket No.: 05049.0008  
For: A DEVICE FOR CARRYING OUT A  
PERITONEAL DIALYSIS TREATMENT

: DECISION ON

: PAPERS FILED

: UNDER 37 CFR 1.42

This is a decision on the declaration filed 29 September 2008 and the communication filed on 11 March 2009, which has been treated as a request for status under 37 CFR 1.42.

### **BACKGROUND**

On 12 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). However, applicants did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because an executed oath or declaration was not provided.

On 30 June 2008, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date" must be submitted within two months from the date of this notice or by 32 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

In response to the Notification mailed on 30 June 2008, applicants filed a declaration on 29 September 2008 signed by Helen Thell as heir of the inventor, Bengt-Olov Thell, now deceased.

On 17 February 2009, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF A DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) because the oath submitted to the USPTO on September 29, 2008 is defective.

On 11 March 2009, applicants responded to the "Notification of Defective Response," indicating that Helen Thell is the heir because the inventor Bengt-Olov Thell has deceased.

### **DISCUSSION**

The declaration is unacceptable at this time because it is not clear that Helen Thell is the sole heir for the deceased inventor, Bengt-Olov Thell. (see MPEP § 409.01(a)).

That is, there may be other heirs who are required to also sign the declaration. The declaration must indicate that he is the sole heir for the deceased inventor in order for the Office to accept the application under 37 CFR 1.42.

In additions, applicants have provided a defective declaration because there are alterations on it - lines across the information on it, and then a different address for the Helen Thell. The declaration has been improperly altered without the proper initialization as required. Any alternation made after the signing of an oath or declaration must be supported by a supplemental oath or declaration under §1.67. Note 37 CFR §1.52.

Moreover, a submission of a declaration executed by all of the heirs of the deceased inventor is construed as an indication that no legal representative of the deceased's estate has been appointed or is statutorily required to be appointed. If this interpretation is incorrect applicants are required to promptly notify the Office of such and submit a declaration properly executed by the legal representative(s) of the deceased inventor.

### **CONCLUSION**

For the above reasons, the request for status under 37 CFR 1.42 is **not accepted**.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to respond will result in the abandonment of the application. Any reconsideration request should include a cover letter entitled "Renewed Request Under 37 CFR 1.42." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the office of PCT Legal Administration.



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